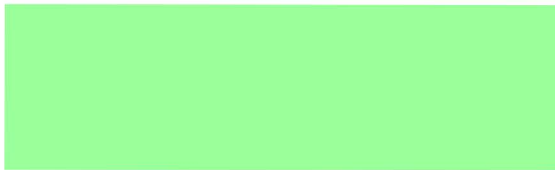


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAR 25 2013**

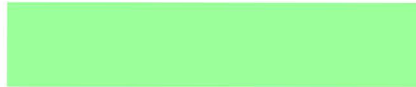
Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. On July 5, 2012, the Administrative Appeals Office (AAO) dismissed the appeal. The matter is again before the AAO on appeal. The appeal will be rejected.

The petitioner is an IT consulting company. It seeks to employ the beneficiary permanently in the United States as a data integration analyst. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. The director denied the petition accordingly.

The petitioner subsequently filed a timely appeal on February 17, 2012.

On July 5, 2012, the AAO dismissed the petitioner's appeal upholding the director's decision to deny the petition. The reasons for the dismissal of the appeal are set forth in the AAO's decision.

The petitioner subsequently attempted to file another appeal on August 7, 2012. The AAO, however, does not exercise appellate jurisdiction over its own decisions. The AAO only exercises appellate jurisdiction over matters that were specifically listed at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).¹ For instance, in the event that a petitioner disagrees with an AAO decision to dismiss an appeal, the petitioner can file a motion to reopen or a motion to reconsider in accordance with 8 C.F.R. § 103.5. In this matter, the AAO would have had jurisdiction over a timely motion if the petitioner had checked box D ("I am filing a motion to reopen a decision"), box E ("I am filing a motion to reconsider a decision"), or box F ("I am filing a motion to reopen and a motion to reconsider a decision") on the Form I-290B, Notice of Appeal or Motion. In this case, counsel, on the petitioner's behalf, checked box B ("I am filing an appeal"), instead. Therefore, the appeal is improperly filed and must be rejected on this basis pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

Therefore, as the appeal was not properly filed, it will be rejected.

ORDER: The appeal is rejected. The AAO's previous decision dated July 5, 2012 shall not be disturbed.

¹ In the process of reorganizing the immigration regulations, the Department of Homeland Security (DHS) deleted the list of the AAO's appellate jurisdiction that was previously found at former 8 C.F.R. § 103.1(f)(3)(iii) (2002). 68 FR 10922 (March 6, 2003). DHS replaced the appellate jurisdiction provision with a general delegation of authority, granting U.S. Citizenship and Immigration Services the authority to adjudicate the appeals that had been previously listed in the regulations as of February 28, 2003. See DHS Delegation No. 0150.1 para. (2)(U) (Mar. 1, 2003); 8 C.F.R. § 103.3(a)(iv). As a result, there is no generally accessible list of the AAO's jurisdiction that may be cited in immigration proceedings or in federal court.